

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SENECA SMITH,

Plaintiff,

vs.

AUTOZONE, INC., and DOES 1-100,

Defendants.

Case No.: 12-cv-06438-YGR

**ORDER TO SHOW CAUSE WHY THIS ACTION
SHOULD NOT BE DISMISSED FOR FAILURE TO
PROSECUTE AND FAILURE TO COMPLY WITH
THIS COURT'S ORDERS**

On November 12, 2013, the Court issued an Order Granting Motion to Withdraw as Counsel and Continuing Hearing on Motion to Modify Case Management and Pretrial Order. (Dkt. No. 30.) In that Order, the Court permitted Lawrance Bohm and Bianca Saad to withdraw as Mr. Smith's counsel upon the filing of a certification stating that they had served copies of all pending motions, responses, and operative scheduling orders on Mr. Smith. Mr. Bohm and Ms. Saad filed the required certification and no longer represent Mr. Smith. (Dkt. No. 32.)

Included among the documents served on Mr. Smith was a copy of the Order Granting Motion to Withdraw as Counsel and Continuing Hearing on Motion to Modify Case Management and Pretrial Order, which stated that the Court would hold a hearing on Mr. Smith's pending Motion to Modify Case Management and Pretrial Order (Dkt. No. 24) and AutoZone, Inc.'s Motion to Enforce the Settlement Agreement (Dkt. No. 25) on December 3, 2013 at 2:00 p.m. The Order also stated that "Mr. Smith or new counsel representing him must appear at the hearings on these motions, or the case may be dismissed for failure to prosecute." (Emphasis supplied.)

The Court held the hearing on December 3, 2013 on the above-referenced Motions, but Mr. Smith failed to appear as required by the Court's Order. In addition, AutoZone has filed a Motion for Summary Judgment, Partial Summary Judgment, and Discovery Sanctions, in which it states that Mr. Smith has refused to appear for his deposition and to respond to written discovery, despite the fact that the Court ordered that he do both on penalty of evidentiary sanctions. (*See* Dkt. Nos. 33, 21.)

Based on this conduct, Mr. Smith is hereby **ORDERED TO SHOW CAUSE** why this action should not be dismissed for failure to prosecute and failure to comply with this Court's Orders. This dismissal would be with prejudice, meaning that Mr. Smith will not be permitted to pursue his claims against AutoZone in this action or in any other action.


A hearing regarding why the Court should not dismiss this action for failure to prosecute and failure to comply with this Court's Orders shall be held on December 17, 2013 at 2:00 p.m. in Courtroom 5 of the Federal Courthouse, 1301 Clay Street, in Oakland, California.

Mr. Smith must file a written response to this Order to Show Cause postmarked no later than December 11, 2013¹, if he contests it, **and** must personally appear on December 17, 2013 at the Federal Courthouse in Oakland. Mr. Smith's failure to provide a written response or failure to appear personally will be deemed an admission that no good cause exists to continue prosecuting this case, and the case will be dismissed with prejudice.

Defendant may appear telephonically at the Order to Show Cause hearing.

IT IS SO ORDERED.

Dated: December 3, 2013


YVONNE GONZALEZ ROGERS
UNITED STATES DISTRICT COURT JUDGE

¹ Mr. Smith may file his written response by mailing it to the Clerk's Office, 1301 Clay Street, Suite 400-S, Oakland, CA 94612.